

1 Plaintiff mophie inc. (“mophie”), by and through its undersigned counsel,
2 hereby brings this complaint against defendant ABM Wireless, Inc. d/b/a
3 Mobileistic (“ABM”) and alleges as follows:

4 **JURISDICTION AND VENUE**

5 1. This Court has subject matter jurisdiction over this action pursuant to
6 28 U.S.C. §§ 1331 and 1338(a).

7 2. This Court has personal jurisdiction over defendant ABM because
8 ABM has purposefully availed itself of the benefits of doing business in this
9 judicial district and regularly does business in this judicial district. Upon
10 information and belief, ABM also has an office within this district at 905 Columbia
11 St. in Brea, California 92821.

12 3. Venue is proper within this judicial district under 28 U.S.C. §§
13 1391(b)-(c), 1400 (a).

14 **RELATED CASE**

15 4. There exists a potentially related case to this matter, *mophie inc. v.*
16 *ABM Wireless, Inc.*, Case No. 8:14-cv-01422-JLS-RNB (C.D. Cal. filed Sept. 5,
17 2014).

18 **PARTIES**

19 5. mophie is a corporation organized and existing under the laws of the
20 State of California, having its principal place of business at 15101 Red Hill
21 Avenue, Tustin, California 92780.

22 6. mophie is informed and believes, and thereon alleges, that ABM
23 Wireless, Inc. d/b/a Mobileistic is a corporation organized and existing under the
24 laws of the State of New York, having its principal place of business at 205
25 Marcus Blvd., Hauppauge, New York 11788 and an additional office at 905
26 Columbia St., Brea, California 92821.

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1 as **Exhibit 2** are true and correct copies of the webpages illustrating the infringing
2 conduct.

3 12. mophie has promoted and sold its products through the use of the
4 Copyrighted Images in print and digital advertisements, online retail websites, and
5 other media prior to the acts complained of herein.

6 13. In or around April 2015, mophie discovered that ABM, without
7 authorization from mophie, was using mophie's Copyrighted Images, which were
8 reproduced and displayed on ABM's website at the addresses listed below,
9 including without limitation, images of mophie's carrying and protective cases for
10 cellular phones, in its sales and marketing materials on the ABM website offering
11 the mophie juice pack products for sale at:

- 12 • [http://mobileistic.com/mophie-iphone-6-juice-pack-plus-charging-case-](http://mobileistic.com/mophie-iphone-6-juice-pack-plus-charging-case-white-4588d.html)
13 [white-4588d.html](http://mobileistic.com/mophie-iphone-6-juice-pack-plus-charging-case-white-4588d.html); and
- 14 • [http://mobileistic.com/mophie-iphone-6-juice-pack-air-charging-case-black-](http://mobileistic.com/mophie-iphone-6-juice-pack-air-charging-case-black-4592d.html)
15 [4592d.html](http://mobileistic.com/mophie-iphone-6-juice-pack-air-charging-case-black-4592d.html).

16 14. These images were created in or around 2014, and are the subject of
17 mophie's copyright registration number VA0001959238. A copy of the
18 registration certificate is attached hereto as **Exhibit 1**.

19 15. On information and belief, and without mophie's authorization, ABM
20 reproduced and distributed additional copies of mophie's Copyrighted Images to
21 existing and potential customers in nationwide markets, including mophie's
22 existing and potential customers located nationwide, through its posting of its sales
23 and marketing materials on its website. ABM's unlawful production, distribution,
24 reproduction and public display of the Copyrighted Images continues to this day.

25 **CLAIM FOR RELIEF**

26 **(Copyright Infringement)**

27 16. mophie repeats and realleges Paragraphs 1 through 15 and
28 incorporates them by references as if fully set forth herein.

1 17. mophie is the exclusive owner of the Copyrighted Images and their
2 underlying copyrights, which are the subject of U.S. copyright registrations and
3 pending registration applications, for the protection of the pictorial and graphic
4 images of mophie's products, including without limitation, images of mophie's
5 carrying and protective cases for mobile electronic devices and audio devices, all
6 of which were taken by or are the creation of mophie.

7 18. mophie's Copyrighted Images contain a large amount of material
8 wholly original with mophie, which material is copyrightable subject matter under
9 the laws of the United States pursuant to 17 U.S.C. § 102(a)(5) of the Copyright
10 Act.

11 19. mophie has complied in all respects with the provisions of the laws
12 governing copyright, pursuant to 17 U.S.C. §§ 101, *et. seq.* of the Copyright Act.

13 20. mophie has promoted and sold its products through the use of the
14 Copyrighted Images in print and digital advertisements, online retail websites, and
15 other media prior to the acts complained of herein. Moreover, because the
16 Copyrighted Images are the subject of a valid and duly issued copyright
17 registration, ABM has been provided constructive notice of the copyrights
18 underlying the Copyrighted Images.

19 21. Pursuant to 17 U.S.C. § 106 of the Copyright Act, mophie, as owner
20 of the Copyrighted Images, possesses exclusive rights in the Copyrighted Images.

21 22. Notwithstanding mophie's valid copyrights, in or around April 2015,
22 mophie discovered that ABM, without authorization from mophie, was using
23 mophie's Copyrighted Images, which were reproduced and displayed on ABM's
24 website at the addresses listed below, including without limitation, images of
25 mophie's carrying and protective cases for cellular phones, in its sales and
26 marketing materials on the ABM website offering the mophie juice pack products
27 for sale at:

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- 1 • <http://mobileistic.com/mophie-iphone-6-juice-pack-plus-charging-case-white-4588d.html>; and
- 2 • <http://mobileistic.com/mophie-iphone-6-juice-pack-air-charging-case-black-4592d.html>.

3 23. These images were created in or around 2014, and are the subject of
4 copyright registration number VA0001959238. A copy of the registration
5 certificate is attached hereto as **Exhibit 1**.

6 24. On information and belief, and without mophie's authorization, ABM
7 reproduced and distributed additional copies of mophie's Copyrighted Images to
8 existing and potential customers in nationwide markets, including mophie's
9 existing and potential customers located nationwide, through, *inter alia*, its posting
10 of its sales and marketing materials on its website. ABM's unlawful production,
11 distribution, reproduction and public display of the Copyrighted Images continues
12 to this day.

13 25. Thus, without authorization from mophie, ABM and/or its agents have
14 unlawfully copied, reproduced, distributed, and publicly displayed mophie's
15 Copyrighted Images, which have been incorporated in ABM's sales and marketing
16 materials and on public display through its website.

17 26. On *at least* April 14, 2015, mophie demanded that ABM remove the
18 subject Copyrighted Images from its website(s) and product(s), and put ABM on
19 further notice of the instant impending action. ABM ignored mophie's requests
20 and intentionally continued the subject infringing acts.

21 27. ABM's acts constitute infringement of mophie's copyrights in
22 violation of the Copyright Act, 17 U.S.C. § 501.

23 28. A substantial similarity, as determined by the ordinary observer, exists
24 between mophie's Copyrighted Images and the unauthorized copies of the images
25 displayed, distributed, and reproduced by ABM on its website and to third parties
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1 as alleged herein, because the unauthorized copies are identical to mophie's
2 Copyrighted Images.

3 29. ABM's actions have diverted mophie's trade, and caused mophie to
4 lose profits. As a result of the foregoing, mophie has been damaged in an amount
5 to be proven, and ABM has been unjustly enriched in an amount to be proven. In
6 addition, as a result of ABM's unlawful acts, mophie has suffered and will
7 continue to suffer irreparable harm, and mophie has no adequate remedy at law
8 with respect to this injury. Unless the acts of copyright infringement are enjoined
9 by this Court, mophie will continue to suffer irreparable harm. mophie is also
10 entitled to disgorgement of profits, attorneys' fees, statutory damages, and the
11 costs of this action.

12 30. On information and belief, ABM's actions have been undertaken with
13 full knowledge and/or reckless disregard that said actions violated mophie's
14 copyrights, notice of which was expressly and constructively provided. ABM's
15 copyright infringement was thereby and therefore intentional and/or willful.

16 **PRAYER FOR RELIEF**

17 WHEREFORE, mophie prays for judgment as follows:

18 A. A permanent injunction enjoining and restraining ABM and its
19 respective agents, servants, employees, successors and assigns, and all other
20 persons acting in concert or conspiracy with ABM or affiliated with ABM, from:

- 21 (a) Copying, reproducing, distributing, displaying or using any
- 22 unauthorized copies of mophie's Copyrighted Images;
- 23 (b) Otherwise infringing mophie's Copyrighted Images;
- 24 (c) Offering, selling and/or distributing mophie products, including
- 25 but not limited to the mophie juice pack, through ABM's
- 26 website, www.mobileistic.com, or through any other
- 27 unauthorized ABM medium of advertising or distribution.

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1 B. That mophie be awarded for ABM's copyright infringement actual
2 damages in an amount to be determined at trial, together with the profits derived
3 from ABM's unlawful infringement of mophie's Copyrighted Images.
4 Alternatively, and upon mophie's election, for statutory damages based upon
5 ABM's acts of infringement and willful infringement, pursuant to the Copyright
6 Act, 17 U.S.C. §§ 101, *et. seq.*, in an amount up to \$150,000 with respect to each
7 copyrighted work infringed, or for such other amount as may be proper pursuant to
8 17 U.S.C. § 504(c);

9 C. That the Court order ABM to pay restitution and/or disgorgement;

10 D. That, because of the exceptional nature (including the reckless
11 disregard of mophie's Copyrighted Images) of this case, the Court award mophie
12 all reasonable attorneys' fees, costs and disbursements incurred as a result of this
13 action; and

14 E. For such other and further relief as this Court may deem just and
15 proper.

16 Respectfully submitted,

17 GORDON & REES LLP

18 Dated: November 19, 2015

19 By: /s/ Craig J. Mariam

20 Craig J. Mariam
21 Hazel Mae B. Pangan
22 Kathryn A. Lafferty
23 Attorneys for
24 plaintiff mophie inc.
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DEMAND FOR JURY TRIAL

Pursuant to Rule 38 of the Federal Rules of Civil Procedure Plaintiff mophie inc. hereby demands a jury trial on all issues so triable.

Respectfully submitted,

GORDON & REES LLP

Dated: November 19, 2015

By: /s/ Craig J. Mariam
Craig J. Mariam
Hazel Mae B. Pangan
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